UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED EMPLOYEES HEALTH FUND,

Plaintiffs,

- against -

Case No. 16-CV-6531

COMPLAINT

METROPOLITAN PAPER RECYCLING, INC.,

Defendant

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United Employees Health Fund (hereinafter "Health Fund"), by its' attorneys, Bryan C. McCarthy, Esq. & Associates, P.C., alleges as follows:

NATURE OF ACTION

1. This is an action by the Plaintiffs for breach of a Collective Bargaining Agreement (hereinafter "Agreement") between an employer and a labor organization representing employees in an industry affecting commerce arising under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq., the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. §141, et seq., and the common law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and 1337, §502(e)(1) of ERISA, 29 U.S.C. §1132(a)(3), §1132(c)(1), §1132(d) §1132(e)(1), §1132(f), and §301(a), of LMRA, 29 U.S.C. §185(a) & (c).

3. Venue is based on the location of the office from which the Health Fund is administered, which is in the Southern District of New York. As such, venue is appropriate pursuant to §502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), and Taft Hartley §301, 29 USC §185.

PARTIES

4. Upon information and belief, the Defendant, Metropolitan Paper Recycling, Inc., (hereinafter "Employer") is a domestic corporation duly organized and existing pursuant to the laws of the State of New York with its principle office located at 847 Shepherd Avenue, Brooklyn, New York.

5. Upon information and belief, the Employer, was and is an "employer" within the meaning of §§ 3(5) and 515 of ERISA, 29 USC §§ 1002(5) and 1145.

6. The Health Fund is an employer welfare benefit plan within the meaning of 29 U.S.C. §1002(1) and 26 U.S.C. §414(j).

7. The Health Fund is a "multiemployer plan" within the meaning of §3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A). The Health Fund was created and is maintained pursuant to §302(c) of the LMRA.

8. The office of the Health Fund is located at 1065 Old Country Road, Suite 202, Westbury, New York.

9. The Health Fund was created pursuant to a written agreement and declaration of trust (hereinafter "Trust Agreement"). The Health Fund is maintained, *inter alia*, for the purpose of providing the participants and beneficiaries with medical insurance benefits.

10. The Health Fund provides benefits to eligible employees and their dependents on whose behalf the Employer is required to make contributions to the Health Fund pursuant to the Collective Bargaining Agreement (hereinafter "CBA") between the Employer and Local 660,

United Workers of America.

PRELIMINARY STATEMENT

11. The CBA was executed on or about August 1, 2012, expiring on July 31, 2015 and upon information and belief renewed thereafter and was effective through October 1, 2016.

12. Pursuant to Article XVIII (18) of the CBA the Employer is required to remit the monthly contributions to the Health Fund as set forth therein.

13. Due to various delinquencies on behalf of the Employer to pay the required contributions to the Health Fund, the Health Fund and the Employer entered into a Settlement Agreement, dated March 6, 2014.

14. As stated in the Settlement Agreement between the Health Fund and the Employer, the Employer, in addition to the monthly contributions, was to pay the Health Fund an additional thirty thousand six hundred and ninety three dollars and ninety one cents ($30,693.91) per month for a period of twenty four (24) months.

15. The Employer failed to make eight (8) payments, for the months of January 2015 through February 2016, in accordance with the Settlement Agreement for a total of two hundred forty five thousand five hundred and fifty one dollars and twenty eight cents ($245,551.28).

16. The Employer has failed to make monthly contributions in accordance with the CBA for the months of July 2015 through December 2015 and March 2016 through September 2016, for a total of seven hundred thirty eight thousand four hundred and forty one dollars and fifty six cents ($738,441.56).

17. To date, Employer has failed to pay the delinquent Health Fund contributions in an amount not less than $983,992.84, not inclusive of interest, for the periods listed above to date and continuing through the pendency of this action, subject to verification by audit.

18. In violation of the Agreement and ERISA, Employer has failed to submit monthly payroll remittance reports and failed to pay contribution and dues for the period of July 2015 to date and continuing through the pendency of this action.

19. By letter dated March 1, 2016 the Employer proposed to enter into another settlement agreement with the Health Fund for payment of the delinquent contributions.

20. By letter dated April 13, 2016, the Health Fund informed the Employer that the Health Fund was not willing to enter into another settlement agreement with the Employer prior to an audit being performed by the Health Fund's own accountant to assess the Employer's ability to comply with the proposed settlement agreement.

21. On or about May 18, 2016 the Health Fund's accountant performed an audit on the Employer's financial books and records.

22. Upon information and belief, on or about October 1, 2016 the Employer negotiated a different health benefit and the participation of the employees in the Health Fund was terminated.

FIRST CAUSE OF ACTION

23. Plaintiffs incorporates by this reference and re-allege, as though fully set forth herein, the allegations of paragraphs "1" through "23" above.

24. The Employer executed the CBA with Local 660, United Workers of America on or about August 1, 2012, covering the terms and conditions of employment of the unit employees.

25. The CBA requires the Employer to submit monthly contribution reports to the Health Fund setting forth the names of the covered employees and the amount of the contribution

made on behalf of the covered employees, in the amounts required by the CBA.

26. The CBA and Section 515 of ERISA (29 USC §1145) require that the contributions required by the CBA, as detailed in the contribution reports, be remitted to the Fund on a timely basis as required.

27. The Employer has failed and refused to remit the required contribution reports and contributions in accordance with the CBA.

28. Employer owes the Health Fund the minimum amount of $983,992.84 for the period of July 2015 through September 2016.

29. In the absence of the required contribution reports, the amount due to the Health Fund is an estimate and is subject to verification by the Health Fund pursuant to an audit.

30. Pursuant to Section 502 of ERISA (29 USC §1132, et. seq.), the Health Fund is entitled to an award of unpaid benefit fund contributions, plus statutory liquidated damages and interest on the unpaid principle amount, together with reasonable attorneys' fees and the costs and disbursements of this action.

31. Therefore the Employer is liable to the Health Fund in the minimum amount of $983,992.84 in unpaid contributions plus liquidated damages, interest, reasonable attorneys' fees and the costs and disbursements of this action.

SECOND CAUSE OF ACTION

32. Plaintiff incorporates by this reference and re-allege, as though fully set forth herein, the allegations of paragraphs "1" through "31" above.

33. On information and belief, the failure to make timely contributions has damaged the Fund by delaying the investment of contributions and increasing administrative costs of the

Fund, thereby increasing the cost of providing the benefit and reducing the assets available for the payment of benefits.

34. The Fund has no adequate remedy at law to make the Employer adhere to its obligations.

35. The ongoing failure of the Employer to make timely remittances of both the contribution reports and the contributions to the Fund will cause the Fund irreparable harm unless the Employer is enjoined from purchasing and/or selling assets, pursuant to Section 502 of ERISA (29 U.S.C. §1332, et. seq.).

36. Therefore, the Fund is entitled to a permanent injunction enjoining the Employer from selling and/or purchasing assets prior to paying the delinquent contributions.

PRAYER

WHEREFORE, the Plaintiffs prays for judgment against the Defendant, Metropolitan Paper Recycling, Inc., as follows:

(1) As to the First Cause of Action against the Defendants, the minimum amount of $983,992.84 due the Health Fund, together with interest from the date of the delinquency and liquidated damages, together with reasonable attorneys' fees and the costs and disbursements of this action, as set forth in 29 USC §1132(g)(2) et. seq, and for such other and further relief as the Court deems just and proper;

(2) As to the Second Cause of Action, a permanent injunction enjoining the Employer from purchasing and/or selling assets and for such other and further relief as the Court deems just and proper.

Dated: November 23, 2016

Respectfully submitted,

Bryan C. McCarthy, Esq., & Associates, P.C.

by: ______________________________

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